

Appl. No. 10/067,608
Amdt. dated 10/26/04
Reply to Office Action of 8/5/04

PATENT
Docket: 020186

REMARKS

Claims 1-31 are pending in the present application.

In the Office Action mailed August 5, 2004, the Examiner rejected claims 1-31 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,373,823 by Chen, et al. (hereinafter "Chen").

Applicants respectfully respond to this Office Action.

The standard for anticipation under §102 requires "the presence in a single prior art disclosure of all elements of a claimed invention arranged as in that claim." *Carella v. Starlight Archery & Pro Line Co.*, 804 F.2d 135, 138, 231 U.S.P.Q.D (BNA) 644, 646 (Fed. Cir. 1998) (*quoting Panduit Corp. v. Dermison Mfg. Co.*, 774 F.2d 1082, 1101, 227 U.S.P.Q. (BNA) 337, 350 (Fed. Cir. 1985)) (*additional citations omitted*). As discussed further below, the Examiner has failed to identify each and every claim limitation, as set forth below.

Regarding claim 1, the Examiner cites various portions of Chen alleged to teach various limitations of claim 1. The Examiner's citations point to no description of the elements of claim 1. In particular, the Examiner has failed to point out where Chen discloses calculating a target power level, detecting wind-up of the target power level, or modifying the target power level when wind-up is detected.

With respect to claims 14-15, 19-25, and 27-31 the Examiner has failed to assert that Chen discloses the respective claim limitations, nor cited any portion of Chen that purports to teach the same.

With respect to claim 2, the Examiner asserts that "Chen further discloses wherein the target power level is the", but omits the remainder of the sentence, thus fails to point out what Chen purportedly discloses, and also fails to cite the portion of Chen in which the disclosure would be found. With respect to claim 3, the Examiner points to no disclosure by Chen teaching detecting wind-up comprising comparing a target power level with a function of a measured power level. With respect to claim 4, the Examiner fails to assert that or point out where Chen specifies a function comprising filtering a measured power level.

With respect to claims 5-12, 16-18, and 22, as described above, the Examiner has failed to point out where Chen teaches each limitation of the respective parent claims, and thus Chen fails

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to disclose the dependent claims as well. Further, the Examiner's citations fail to point to disclosure in Chen describing the various limitations in the respective claims listed.

With respect to claim 26, the Examiner asserts that "it is inherent that the technique has been disclosed by Chen can be used in either mobile station or base station." As stated in *Trintec Indus., Inc v. Top-U.S.A. Corp.*, 295 F.3d 1344 (Fed. Cir., 2002):

A single prior art reference anticipates a patent claim if it expressly or inherently describes each and every limitation set forth in the patent claim. *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2D (BNA) 1051, 1053 (Fed. Cir. 1987). Inherent anticipation requires that the missing descriptive material is "necessarily present," not merely probably or possible present in the prior art. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2D (BNA) 1949, 1950-51 (Fed. Cir. 1999) (citing *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2D (BNA) 1746, 1749 (Fed. Cir. 1991)).

As recited in claim 26, the wireless communication device of claim 24 is not inherently a base station.

Thus, applicants respectfully assert that none of claims 1-31 are anticipated under §102(e) by Chen. As such, applicant respectfully request that the Examiner withdraw the objections.

Specification

Applicant provides herewith amendments to the specification. The amendments to the specification are made by presenting marked up replacement paragraphs which identify changes made relative to the immediate prior version.

The changes made are primarily typographical or grammatical in nature, or involve minor clarifications of awkward wordings. In particular, a reference to FIG. 3 was incorrectly identifying FIG. 2.

Applicant believes these changes add no new matter to the application and are fully supported by the original disclosure.

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REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: 10/26/04

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